

OPINION AND AWARD

STATE OF WISCONSIN

BEFORE THE EMPLOYMENT RELATIONS COMMITTEE

In the Matter of the Petition of :  
DRIVERS, SALESMEN, WAREHOUSEMEN, :  
MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES : Case XXV  
AND HALPERS UNION LOCAL NO. 695 : No. 17330 MIA-62  
: Decision No. 12392-A  
for Final and Binding Arbitration :  
Involving Personnel with Power to :  
Make Arrests, Including Matrons, and :  
Excluding Sheriff, Captain, Lieutenants :  
and Administrative Assistant of :  
:  
COUNTY OF WAUKESHA

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APPEARANCES. For the Union: GOLDBERG, PREVIANT & UELMEN, by Mr. John S. Williamson, Jr, Attorney; and Glen Van Keuren, Representative Teamsters Local Union 695.

For the County: MICHAEL, BEST & FRIEDRICH, by Mr. Marshall R. Berkoff, Attorney; Mr. John Engler, County Board Member, Mr. Robert J. Lamping, County Board Member, Mr. Allan Walsch, Personnel Administrator, Waukesha County.

APPLICABLE SECTIONS OF THE STATUTES

The above is a proceeding under Wisconsin Statutes 111.77 Section (3) (b), (4) (b) (form 2), (5) and (6).

Section 3 provides for settlement of disputes in collective bargaining units composed of Law Enforcement Personnel and Firefighters. Section (3) concerns procedures for resolution of disputes and impasses by final and binding arbitration, which is ordered by the Wisconsin Employment Relations Commission and prescribes the selection of a neutral arbitrator.

Section (4) (b) provides an alternate form for final and binding arbitration:

"Form 2. Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

Section (5) is as follows:

"The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control."

Section (6) admonishes the Arbitrator to consider certain factors:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

- "(a) The lawful authority of the employer.
- "(b) Stipulations of the parties.
- "(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employes generally:

"1. In public employment in comparable communities.

"2. In private employment in comparable communities.

"(e) The average consumer prices for goods and services, commonly known as the cost of living.

"(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

"(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

"(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

BACKGROUND. Members of the Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local 695, hereinafter identified as Teamsters Local Union No. 695 or as the "Union", who were employed in the Waukesha County Sheriff's Department and were identified by having the power of arrest, were unable to reach an agreement with the County of Waukesha in terms of employment, through collective bargaining for the calendar year of 1974. On November 8, 1973, a petition for final and binding arbitration pursuant to Section 111.77 of the Wisconsin Statutes was filed with the Wisconsin Employment Relations Commission, and became identified as CASE XXV, No. 17330 MIA 62.

On January 11, 1974 the Commission found that there was an impasse between the parties and ordered that final and binding arbitration be initiated.

On January 22, 1974, the Commission issued an order appointing Frank Zeidler, Milwaukee, Wisconsin, as the impartial arbitrator to issue a final and binding award.

On January 18, 1974, the Union sent a copy of its final proposal. On January 21, 1974, the County sent its final offer to the Commission and stated:

"We are furnishing this information in compliance with the order of the Wisconsin Employment Relations Commission. We wish it clearly understood, however, that we are not waiving our right to contest the validity and constitutionality of Section 111.77 of the Wisconsin Statutes, and, we expressly reserve our right to do so....."

Following submission of their final offers, both parties availed themselves of the opportunities to file an amended final offer, and both did so as of March 4, 1974.

A hearing was then held on the remaining issues on March 11, 1974, at the Court House at Waukesha, Wisconsin at which extended testimony was presented and numerous documents were filed in evidence. Subsequently the parties exchanged briefs as of July 15, 1974, after several extensions owing to press of other matters.

There was an earlier exchange of correspondence which took place between the parties and the Arbitrator relating to one of the issues. This correspondence and the views therein will be considered in connection with the issues involved. The County furnished supplemental exhibits after the hearing.

#### ISSUES AND FINAL OFFERS

In its Final Offer as Amended of March 4, 1974, Waukesha County listed 24 propositions. The Union in its final offer submitted 23 propositions. When these offers were compared there was agreement on all but four propositions. These propositions are now stated.

Union's Final Offer

1. ARTICLE 7.01 - Wages. Union amends position to increase wages 8.3% in all present classifications effective January 1, 1974.
2. ARTICLE 7.06 - Longevity Pay. Re- introduce longevity pay plan in effect prior to January 1, 1973.
3. New Article - Liability Indemnification. Provide for full liability indemnification as originally proposed.
4. ARTICLE 20.01 - Length of Contract. One year agreement effective January 1, 1974, through December 31, 1974.

County's Final Offer.

1. ARTICLE 7.01 - Wages. The County modifies its offer of November 8, 1973, as follows:
  - a. Wage increase effective January 1, 1974 - 4 per cent.
  - b. Wage increase effective July 5, 1974 - 2 per cent.
  - c. An Alternate offer of 6 per cent effective January 1, 1975, or in the alternative, a wage rate reopener for the second year. (January 1, 1975 - December 31, 1975)
2. ARTICLE 7.06 - The County maintains its response of continuing the current contract language and practice (Longevity Pay).
3. ARTICLE (new) - The County modifies its response of November 8, 1973, and offers a written statement of County policy (not included in the contract) as follows:

"In cases where officers performing services in the line of duty are sued for actions they have taken, the County will in all cases where it determines the officers acted in the line of duty and in good faith provide legal counsel for the officer at the County's expense." (Liability Indemnification.)
4. ARTICLE 20.01 - The County maintains its offer of a two year agreement (January 1, 1974 to December 31, 1975) (See No. 4.)

No. 4 alluded to above is No. 1 of this section entitled "Wages".

DISCUSSION ON ISSUES

In consideration of the four issues of wages, longevity, indemnification and contract length, the Arbitrator considered the factors cited in Section 111.77 Section 3 (6) cited above. The issues will now be considered first individually and then as to their total and collective impact.

ISSUE OF WAGES

County's Offer. The County in its amended offer on wages offered the following:

- a) Wage increase effective January 1, 1974, 4 percent.
- b) Wage increase effective July 5, 1974, 2 per cent
- c) An alternate offer of 6 per cent effective January 1, 1975, or in the alternative, a wage re-opener for the second year (January 1, 1975 - December 31, 1975.)

Actual effective dates would be January 5, 1974, July 6, 1974, and December 28, 1974 for 1975, to fit computer programming.

Union's Offer. The Union's amended position is to increase wages 8.3% in all present classifications effective January 1, 1974.

The following table is useful for comparing offers at the top of the range for the different classifications of employees involved.

COMPARISON OF OFFERS AT TOP OF RANGE FOR  
EMPLOYEES IN BARGAINING UNIT

<u>Classification</u>	<u>No. Empl.</u>	<u>No. Ranges</u>	<u>To Top of Range</u>	<u>Union Req.</u>	<u>County offer</u>		
					<u>1/74</u>	<u>7/74</u>	<u>1/75</u>
Deputy Sheriff	68	6	\$918/Mo	1007	954	973	1031
Assistant Processing Administrator	1	6	Ibid.				
Detective	13	2	977/Mo	1072	1016	1036	1098
Identification Officer	2	2		Ibid.			
Huber Law Officer	1	2		Ibid.			
Juvenile Officer	4	2		Ibid.			
Sergeant	9	2	989/Mo	1085	1028	1048	1110
Process Administrator	1	2		Ibid.			
Juvenile Administrator	1	2		Ibid.			
Detective Sgt.	1	2	1058/Mo.	1158	1100	1122	1189
Jail Matron III	1	5	729/Mo	800	758	773	819
Jail Matron I	4	5	640/Mo.	703	665	678	718
Total Employees	106						

UNION'S PRESENTATION. The Union is asking for an 8.3% increase in wages. This increase is derived from the information that the rise in the cost of living in 1973 was 8.8%. From this total the Union deducted 0.5%. This deduction was made because the Union is asking for a restoration of longevity pay for all employees, instead of holding to the 1973 agreement to bar new entries into the system.

The Union asserts that in its 1973 contract, it was informed in the process of negotiation that the County was willing to go from a 5.0% proposed increase in wages to a 5.5% if the Union would forego longevity for newly hired employees. Hence there arose this concept that the cost of longevity pay was equal to 0.5% of the pay rate, and hence the Union is offering to drop 0.5% below the rate of 8.8% increase to get longevity restored.

The Union asserts that if the County does not grant this rate of increase, then the real wages of the employees will fall below the 1973 level.

The Union has presented a chart of Comparative Monthly Wage - Deputy Classification (Union Exhibit I). A summary of the monthly wage at the top of the range for deputy sheriffs is given here as a means of comparison.

MONTHLY RATES FOR DEPUTY SHERIFFS AT  
TOP OF RANGE IN SELECTED JURISDICTIONS

<u>Contract Year</u>	<u>County</u>	<u>Top</u>	<u>Steps</u>
1974	Dane	981	5
1974	Jefferson	885	5
1974	Kenosha	970	4
1973	Milwaukee	1010	5
1974	Ozaukee	927	5
1973	Racine	935	4
1973	Rock	908	4
1973	Walworth	895	6
1974	Washington	960	4
1974	Waukesha		
	Union Proposal	994	
	Waukesha		
	County Proposal		
	1/1/74	955	
	7/5/74	974	
	1/1/75	1032	

The Union also provided a Table showing the following top rates for Dane County personnel after 5 steps.

Matron	981
Traffic Officer and Deputy I	870
Traffic Officer and Deputy II	981
Sergeant	1063

The Union also showed that fringe benefits are available under other jurisdictions, but no table of the benefits was furnished to be able to make comparisons as to the total of wages and benefits. Contracts were furnished for Ozaukee, Dane, Kenosha and Washington County.

In his Brief on the issue of wages, Counsel for the Union argues that by its offer the County is reducing the real wages of employees from 4.8% for the first six months of 1973, and thereafter the 2.8%. Such a reduction is not based on proof of the County's inability to pay, and it holds that it is inconceivable that the Arbitrator would accept this proposal. Counsel calls attention to the Subsection 6 (e) of the Section 111.77 of the statutes which directs the Arbitrator to take into account

"The average consumer prices for goods and services commonly known as the cost of living."

There is no reason why the Deputies should receive less in 1974 than in 1973. The Union argues that the County has placed the weight of its argument on the fact that other unions accepted a decrease in real wages. The Union does not know whether these reductions were warranted by the employees rendering less service, or whether the reduction demonstrated a lack of bargaining power.

The Union holds that the Deputies are in a different position than employees in other unions. The Deputies can not use selfhelp and therefore the Arbitrator is to consider their claims on the merits and what they are entitled to. The County, according to the Union, can not show that the employees were overpaid in 1973 and can not show County inability to pay in 1974; therefore the County should pay in real wages in 1974 what it paid in 1973.

The Union states that if the Arbitrator holds against it on the final offers, then the Union at least desires the re-opener provided by the County and left to the discretion of the Arbitrator.

COUNTY PRESENTATION. The County for its presentation presented the following summaries in its Supplemental Exhibits. 106 employees are figured in these calculations.

AVERAGE HOURLY VALUES OF SALARY AND EMPLOYEE BENEFITS FOR WAUKESHA COUNTY DEPUTY SHERIFFS.				
<u>Salary or Benefit</u>	<u>As of 1/74</u>	<u>Offer of 3/74 for 74</u>	<u>Offer for 75</u>	<u>Union for 74</u>
Average Hourly Wage	5.210	5.47	5.86	5.64
Longevity (1/1/74)	.176	.185	.201	.191
Vacation	.280	.310	.361	.319
Holidays	.188	.197	.234	.203
Sick Leave	.208	.219	.234	.226
Health Insurance	.260	.260	.260	.260
Life Insurance	.026	.029	.029	.029
Pension	.975	1.023	1.096	1.054
Pension, Prior Service				
Dollar Cost	.215	.215	.215	.215
Clothing Allowance	.75	.090	.090	.090
Initial Clothing Allowance	.008	.008	.007	.008
Incentive Pay	.095	.095	.095	.095
<b>Total</b>	<b>7.716</b>	<b>8.101</b>	<b>8.682</b>	<b>8.330</b>

The Arbitrator inspected the calculations provided by the County, from which calculations the foregoing tables were derived and he believes that the calculations are reasonable estimates, acknowledging the variable conditions upon which they are based.

The County further makes a point that with respect to Deputy Sheriffs in the third to sixth steps of their range, such employees in every instance have earned more than their annualized monthly salaries would indicate their total pay would be. Tables provided by the County showed that some employees in this classification exceeded their annual income rate by more than one thousand dollars. Other employees in other classifications also exceed their annual income rates.

From the tables provided the County states that the figures in the following table can be derived. The table is prepared by the Arbitrator.

GROSS COSTS OF WAGE AND BENEFIT INCREASE TO COUNTY  
FOR 1974

<u>Category</u>	<u>County</u>	<u>Union</u>	<u>Diff.</u>	<u>% Inc. of Union Req.</u>
Wage costs	1,159,640	1,195,680	36,040	3.1
Wage and benefits	1,717,412	1,765,960	48,548	2.8

It should be noted that fringes under the County's proposal come to 48% of the wages paid, and under wages and benefits they come to 47% of the wages paid. Thus in either case wages represent about one half of the whole benefits of wages and fringes employees receive if these figures are correct.

The County notes that in its offer it included benefits as follows:

1. Improved vacation: 3 weeks after 7 years instead of 3 weeks after 8 years; 4 weeks after 15 years, instead of 4 weeks after 18 years. Cost 8.1¢
2. Improved holiday benefits; a second floating holiday for a total of 10 holidays. Cost 4.6¢
3. Improved clothing allowance from \$13.50 to \$15.00 monthly, with original allotment of 350. Cost 1.5¢
4. Improve funeral leave to include grandparents. No estimate.
5. Increased costs of County contribution to pensions. Cost 12.1¢

The County notes that maintenance of existing programs also involves increased costs.

1. Longevity: up 2.5¢
2. Sick Leave: up 2.6¢
3. Health Insurance: up possibly 5 to 8¢. No increased costs shown.
4. Life Insurance: up 0.3¢
5. County incentive pay: costs up but are projected at 9.5¢.

The County maintains that fringe benefits thus cost 31.7¢ without inclusion of possible increases in health insurance costs.

The County also holds that the average hourly rate goes from \$5.21 to \$5.47 in 1974 and \$5.86 in 1975, or 26 cents in 1974 and 39 cents in 1975.

Average hourly costs go from \$7,716 in 1974 to \$8.101, to \$8.682 as shown in the charts concerning Wage and Fringe benefits. They increase from 38.6¢ in 1974 to 48.1¢ in 1975.

Under its offer the County estimates its increase in labor costs in 1974 will be \$81,620, and in 1975 they will increase \$123,172.

The County contends that it is necessary to compare top rates of deputy sheriffs with other counties to get a proper or meaningful comparison. The County offer would result in deputy sheriffs being paid \$954 per month in January, 1974; and \$973 in July, 1974. The County maintains that the \$954 rate is \$10 a month more than the average of top deputy rates listed by the Union.

The County maintained that in its rate offered to the Union, it had comparable settlements with other unions with which it negotiates, and this must be given weight in consideration of results so that there will not be an incentive to one Union to delay settlement to obtain a higher rate at the end, after other unions have settled; and thus to distort the pattern of settlement.

The County notes that the Union has argued that the national cost of living index is 8.8%. It states that this does not justify the demand to meet this rise since 33.25% of the index is related to housing which has no immediate effect on day to day purchasing. Further the County cites the testimony of County Board Member Robert J. Lamping that national settlements were less than the cost of living increase, and the County furnished documentation to this effect from Labor Law Reports of 11 -30 -73 (CCH).

The County also notes that it has not experienced difficulty in recruiting under its present rates and it has in fact recruited some employees from the Milwaukee area.

The County states that it did not predetermine the rates it proposed but as a result of the bargaining and of give-and-take this is the way its packaged offer came out.

The County also states that it had to be wary of the limit on taxation imposed by the state.

The Arbitrator has ascertained that the total budget of Waukesha County for 1974 was \$27,340,140.

The County states that in its studies it ascertained that the following conditions of settlement were reported for 1974 for certain governmental jurisdictions:

<u>Jurisdiction</u>	<u>Conditions</u>
Kenosha County	6.47% maximum
Milwaukee County	Not settled
Ozaukee County	6% in effect
Washington County	5% with a possibility for 6%
Brookfield City	Not settled
Menomonee Falls City	Not settled
Oconomowoc City	In arbitration
Waukesha City	Approximately 6%

Other documentation was provided for compilations of jurisdictions with various fringe benefits, which are not at issue here.

In its wage offer the County has provided a re-opener for 1975, as an alternative to 6% in 1974. It stated that it was doing this reluctantly but did so because of an arbitrator's decision involving the city of Waukesha, in which the arbitrator who had the option to decide all issues, allowed a re-opener for 1975.

DISCUSSION ON WAGES. With respect to the rise in prices, according to the data available to the Arbitrator, the one index shows that the cost of living based on a 1967 base rose from 123.7 in 1972 to 131.5 in 1973, which is a 6.3% increase. The index further rose to 139.0 in February of 1974 to 142.1 in May, 1974. The May level represents an 8.5% increase over the 1973 rate.

The Union bases its statistics on LRR, Vol. 85 #7, January 28, 1974, page 63, in which it was reported that the consumer price index was up 8.8% in December 1973 over December 1972. The Arbitrator has ascertained that the Consumer Price Index from December 1972 to December 1973 rose 8.5% based on a 1967 basis in the Milwaukee Metropolitan Area.

The range therefore is around 8% into the year 1974 from about the first part of 1973.

With respect to overall compensation presently received by the employees, including direct age compensation and benefits, it appears that the additional benefits are substantial, and improvement has been made in these benefits, while built in improvements are also occurring based on any rise in wages. From statistics furnished by the County, fringe benefits appear to total about 48% of wages.

It is, however, difficult to compare benefits and fringes in Waukesha County as a package with those of other counties, and to know what the total package in each county or related jurisdiction comes to. The Arbitrator concludes that the employees enjoy favorable conditions with respect to benefits from the County's showing.

With respect to comparisons of rate of increases in other jurisdictions, it appears from the evidence provided that the offer of the County was slightly less than general settlements in the area except for settlements within its own jurisdiction. With these latter settlements the County's offer is quite similar.

With comparisons with top range in various counties in 1974, the County's proposal of a top of \$974 for Deputies after 7/74 exceeds all neighboring counties except Dane and Milwaukee which are much more populous in character.

Concerning the ability of the parties to pay, the increase requested by the Union above what the County will pay seems within the power of the County since the wages and benefits requested by the Union over and above the County's offer amount to \$48,548 which is 0.17%. However this 0.17% of the total budget for one bargaining unit might produce a distorting effect with respect to other bargaining units and make a fair agreement between the County and various employee Unions more difficult in the future.

On the whole, weighing the elements, there is a slightly greater weight to the Union's argument for an increase because of the rate of inflation in 1974 and the possibility of an employee lag.

For reasons developed later in the analysis of the issues, the Arbitrator tends to favor the position in which the County's final offer on wages is accepted for 1974 with the re-opener for 1975.

#### ISSUE OF LONGEVITY

COUNTY'S FINAL OFFER. With respect to longevity, the County maintains its response of continuing the current contract language and practice.

UNION'S FINAL OFFER. the Union proposes to re-introduce the longevity pay plan in effect prior to January 1, 1973.

COUNTY'S PRESENTATION. The County offered the following position on longevity, which is a statement of its provision in the 1973 Teamster Contract:

"7.06 Longevity Pay - Longevity pay shall mean a percentage of salary earned by the employee based on length of continuous service paid to qualifying employees in addition to their total earnings according with the following schedule. Employees hired after January 1, 1973, shall not be eligible for longevity pay. It is not the employer's intent to eliminate the longevity pay program for employees hired before January 1, 1973. Employees hired before January, 1973, shall be eligible for longevity pay. Longevity pay will be based on all earnings...."

Thereafter there followed a table with longevity being reckoned at 2.00% of gross earnings in the 6th year to 6.50% in the 20th year of employment.

The County submitted a table, BARGAINING UNIT ONLY, LONGEVITY COST PROJECTIONS 1974-1994. This table shows a year by year growth in Total Estimated Longevity Cost from a total of \$40,996.36 in 1974 to a total of \$208,384.40 in 1994. The table is herewith included. See Appendix A.

The County in its 1973 contract strongly held to the position of not including newly hired employees in the longevity system because of what it felt was an excessive and insupportable cost in the future. The County holds that this excessive cost does not support the conclusion of the Union that led to the reasoning that it could once again revert to a situation in which all employees are included by reducing a wage request from 8.8% to 8.3%, thus equating the cost of longevity to 0.5%. The County asserts that the testimony of the Union that this kind of a trade-off occurred in reaching an agreement in 1973 is not supported by the actual conditions. The County holds that at no time did any representative of the County identify the cost for the elimination of longevity. Instead the increase of the County's wage settlement was part of a package in which all matters were considered as a whole, and not in pieces or units.

The costs of this program, according to the County, are staggering in the future, and this is not controverted by the Union, and therefore the Arbitrator should sustain the County's position.

UNION'S PRESENTATION. The Union holds that the evidence clearly points to the fact that the 0.5% increase above the 5.0% wage increase offered by the County in 1973 was a less than equal quid pro quo for the Union's yielding on longevity and other critical issues relating to safety provisions for the Deputies. The Union states that the County so strongly desired to end longevity for new hires that it sought to avoid arbitration by improving its offer by 0.5% and the Union in turn yielded on the issue and also dropped other critical matters. According to the Union, the County had the power to enforce its views on other Unions, but the County could not enforce them on the Union, because this Local can force arbitration under the statutes; thus it is clear that the increase of 0.5% was the reason why the County raised its offer on wages.

The Union holds that since the County so introduced the evaluation of longevity as equal to 0.5% of the pay rate, it has no valid complaint that the matter is re-introduced in this contract.

The Union holds that to have two kinds of employees in the bargaining unit with different rates of pay because one group is under longevity and one not, introduces a divisive factor which ought not to exist. The minority who do not get longevity will be an increasing minority, and the Union is therefore not waiting for six years before it re-opens the issue, but it is opening it now.

DISCUSSION ON LONGEVITY. The cost of longevity to the County for 1974 is estimated at \$40,896. The estimated cost of wages for 1974 is \$1,159,640. The former cost is therefore 3.85 of the latter and not 0.5%. It is reasonable to believe that the issue of longevity involved to some degree the offer of the County in 1973 to go from 5.0% to 5.5% in exchange for the dropping of longevity and some other issues involving safety of officers. However in the view of the Arbitrator this is an important issue to the County because of its accumulative impact, and the offer of the Union to drop its wage request by 0.5% while at the present time may have an equivalent dollar cost, in the long run putatively can result in considerable escalation of costs.

The Arbitrator does not necessarily accept the long range projections of the County as to growth at its present rate, either in number of employees or rate increases, but in any event it does appear as if this County will continue to grow, and therefore the offer of the Union is not an equivalent for the County, and the Arbitrator believes that this issue should be decided by later bargaining if possible.

The Arbitrator therefore believes that on this issue, weight of greater reasonableness lies with the County.

## ISSUE OF INDEMNIFICATION

BACKGROUND. Before the issue of what the final offer is on the question of indemnification for officers subject to suit, it is necessary to give some background to this issue to decide whether the issue exists before the Arbitrator.

At the time of the amended final offers, the County's offer was stated as follows:

"The County modifies its response of November 8, 1973, and offers a written statement of County policy (not included in the contract) as follows:

"In cases where officers performing services in the line of duty are sued for action they have taken, the County will in all cases where it determines the officers acted in the line of duty and in good faith provide legal counsel for the officer at the County's expense."

The Union in its final amended offer proposed a new liability indemnification article. This article, known as Article XIX - LIABILITY INDEMNIFICATION, reads as follows;

"Provide that every deputy covered by this Agreement shall be saved harmless from any and all liability which may arise against him during the good faith performance of such deputy's duties for false arrests, erroneous service of civil process, false imprisonment and other hazards which traditionally confront law enforcement officers. In the event it becomes necessary for a deputy to defend himself against charges such as those enumerated above, he shall have the services of the Waukesha County Corporation Counsel's office made available to him which shall undertake the defense of such charges. Costs of the trial or other costs connected with the defense of charges made against the deputy shall be reimbursed by Waukesha County to the deputy. The deputy will be compensated at his regular rate of pay for any time which is required of him to be away from his employment duties for deposition, trial or other hearings necessary in connection with his defense of such charges. A judgement for money damages, costs and attorneys' fees of a plaintiff or claimant in such a matter will be paid for by Waukesha County without the deputy being in peril of having his property subject to execution or other collective device."

The Union asserts that this clause was derived from a Milwaukee County contract for 1972.

At the hearing on March 11, 1974, the Union through Counsel offered to accept the County's position on the issue of indemnification and remove it from consideration for final offer. The County strenuously objected on the grounds that this action is illegal. The Arbitrator stated that he would take the matter under advisement but that he leaned to the view that the issue was still involved and could not be extinguished in this manner.

Following the hearing, Mr. Williamson, Counsel for the Union sent the Arbitrator a letter on March 13, 1974, the text of which is as follows:

"I called Mr. Berkoff today to inform him that the Union bargaining committee on behalf of Local 695 had agreed to accept County's proposal on protection of deputies who face charges arising out of their law enforcement work. This acceptance is based on two facts (1) the willingness of the County for the first time to put their offer on this issue in writing; and (2) the explanation of the meaning of the County's offer in writing given by Supervisor Robert Lamping's testimony. Though the members of the bargaining committee continue to believe Local 695's proposal is preferable, they believe the County's written proposal, as explained by Supervisor Lamping, meets the need of the deputies to such a degree that, had they known that this was the County's position before the Union's petition, they would have accepted it. Local 695 therefore now accepts the County's proposal on this issue.

"Mr. Berkoff, however, apparently takes the position (1) a party cannot change its offer based on a change in the other party's that the party learns of for the first time after its petition is filed; and (2) a party cannot even accept a proposal of the other party after it learns what that party's proposal means. Mr. Berkoff's present position negates the entire philosophy underlying all statutes dealing with

collective bargaining: the philosophy that a solution the parties agree upon is always preferable to one imposed by an outsider. Mr. Berkoff's present position is also inconsistent with his own conduct in agreeing to talk to the Union prior to the start of the hearing. Obviously if the talk had led to an agreement on how to handle the problem which both the County's and the Union's proposal is directed to, there could be little doubt that the issue would then have been withdrawn. If that assumption did not underlie the County's willingness to talk, then the discussion would have been an exercise in futility and Mr. Berkoff would have known that before he engaged in such discussion.

"If Mr. Berkoff continues to insist on his present position, then we shall state more fully the Union's contrary position in our brief. But I can not believe that the County has so little interest in having its own proposal accepted that it will refuse to permit the Union to accept it. Such efforts to gain some hoped-for tactical advantage on other issues separate from and unrelated to protection for deputies faced with lawsuits arising from the performance of their duties reflects poorly on the County's seriousness in attempting to achieve an equitable resolution of its disputes with Local 695."

On March 27, 1974, Counsel for the County, Mr. Berkoff, sent the Arbitrator his comment on this situation. He said,

"Thank you for a copy of your letter to Mr. Williamson of March 23, 1974. The Union continues to attempt to alter its final positions on one of the issues submitted to the Arbitrator and heard at the fact finding hearing.

"Mr. Williamson now criticizes the County for not agreeing to the Union's proposed modifications in its position on the day of the hearing and now after the hearing. The County's position is governed by statute. I am enclosing for the Arbitrator's file a letter from Mr. Morris Slavney, Chairman of the Wisconsin Employment Relations Commission, on this precise issue. Mr. Slavney sets forth a view of the Commission that it would not be proper for either party to amend its final offer 'five minutes' before the time the hearing starts. It follows that it would not be proper for the Union to amend its offer at this time for reasons stated by Mr. Slavney in the second paragraph of his letter.

"We think it improper that Mr. Williamson, who belatedly wishes to change the Union's last and final position on one particular issue, should now cast stones at the County for following the procedures prescribed by the state and to state as he does that our conduct reflects poorly on our seriousness in attempting to achieve an equitable resolution of its dispute with Local 695. The County believes the Union has taken unreasonable positions on several issues and that these facts are properly the subject for the Arbitrator.

"We believe the Arbitrator's ruling on the issue at the hearing was correct and consistent with the statute and the Commission's interpretation thereof. We do not believe that Mr. Williamson's statement and inferences of March 13 are either productive, correct or fair."

Counsel attached a letter of March 14, 1973, from the Wisconsin Employment Relations Commission, Morris Slavney, Chairman, to the Honorable Charles C. Deneweth, Mayor of the City of Superior, Wisconsin. The text of this letter was

"In reply to your letter of March 13, 1973, relating to the time in which a party to final and binding arbitration involving law enforcement or firefighting personnel may change its final offer, the statute provides that 'either party may amend its final offer within five days of the day of the hearing.' The Commission does not believe that it would be proper for either party to amend its final offer 'five minutes' before the time the hearing starts.

"If either party desires to amend its final offer before the hearing, such amended offer should be in writing and should be received by the other party and the Arbitrator at least prior to the date of the hearing. To do otherwise would certainly violate the spirit of the statute."

Hence the first question to be resolved is whether the issue of Liability Indemnification is still in the final offers of the parties.

UNION'S POSITION. The Union asks the question, "May a party under Section 111.77 by accepting the other party's proposal on an issue after the arbitration hearing has commenced remove that issue from arbitration?" In its answer to this, the Union Brief argues that since the primary legislative purpose of Section 111.77 is to foster agreement between the parties on as many issues as possible without Third Party intervention, Section 111.77 should be construed to permit agreements on issues and not to prevent them.

The Union bases this conclusion on its belief that the history of Section 111.77 establishes that the section has the purpose of providing an effective mechanism for resolving disputes over conditions for fire-fighters and law enforcement personnel so as to avoid lockouts because labor peace among such employees is more crucial than in other areas of municipal employment.

The mechanism of compulsory arbitration was thus introduced to resolve disputes. The legislature according to the Union, also feared that compulsory arbitration might become a substitute for collective bargaining because the parties would negotiate with a view toward presenting claims to an arbitrator; and instead of making necessary compromises, the parties would count on the Arbitrator doing so; and they would thus avoid responsibilities for the final agreement.

The Union holds that the final-offer type of arbitration enacted by the Wisconsin Legislature was designed to avoid the above problems by putting pressure on the parties to settle, lest they suffer a worse condition under final offer, and they would have to put forth best offers lest they suffer a rejection, and they could not avoid blame for the final result.

The Union, citing several references, holds that a statute should be construed to give effect to its leading idea and the whole should be brought into harmony therewith if reasonably practicable. Therefore the declaration of the legislature should be given great weight and a statute should not be construed so as to produce absurd or unreasonable results. Since the purpose of the state is to settle disputes and Local 695 accepts the County's position on the issue of indemnification, there is no dispute on this issue before the Arbitrator.

The Union holds that it is absurd not to accept this interpretation because otherwise one would be preventing a resolution of a dispute. Further, under such reasoning then, the Arbitrator could issue an award in favor of a position that the Local has abandoned, even if the Local accepted all of the County's offer. Thus under such reasoning Section 111.77 becomes an end in itself and not a means of resolution of a dispute.

The Union further holds that the County has not argued that Section 111.77 prevents the removal of the issue from the Arbitrator, and acknowledges that it, the County, could withdraw the issue. By keeping the issue alive, the County is advocating a policy that permits one party to create an artificial dispute after the bona fide dispute ceases to exist.

The Union further holds that the failure of the County to accept the Local's offer is evidence of bad faith bargaining.

The Union states, however, that if the Arbitrator holds that the issue of indemnification is still before him, the Arbitrator should adopt the Union's position. According to the Union, the County by insisting on keeping this issue in the final offer thus demonstrates that it can live with this proposal and the proposal is not too different from its own.

COUNTY'S PRESENTATION. The County holds that the issue of indemnification has become substantive and procedural. Up until the day of the hearing, March 11, 1974, the Union had held to its proposal. The County's offer was a written statement, not to be included in the contract, as cited earlier, and it was to the effect that the County, in cases where it determined officers to have acted in the line of duty and in good faith, would provide legal counsel at County expense.

The County is unwilling to be forced to defend a deputy who might have acted in bad faith. The Union offered no evidence that there was a need. In fact the County had in two previous cases defended deputies, but cited a Dallas incident where a deputy acted in a questionable manner.

The County states that the Union's proposal is in doubt as to legality. The Wisconsin Constitution Article 6, Section 4, states that the County shall never be made responsible for acts of the Sheriff, and an opinion of the Wisconsin Attorney General holds that this immunity extends to undersheriff and deputy sheriffs. The County is in doubt also as to whether it has the legal authority to accept this position.

The County has cited various authorities on this issue, and concludes that payment of judgment as to damages and costs is at the most discretionary on its party; and there is serious question as to whether the County could legally agree to the Union position if it wanted to.

The County argues also that most surrounding counties do not have such a provision in the contract.

As to the procedural question, the County raises the question whether at the hearing or afterward the Union can offer to accept a County position and thus eliminate this issue of indemnification.

The County holds that the legislative rationale for "Form 2" arbitration is to induce each party to adopt a final offer which is reasonable enough, so that the Arbitrator with the duty of selecting it will select it. To permit one party to shift positions at the hearing would remove the impetus to reasonable bargaining.

The County cites a Wisconsin Employment Relations Commission letter which states;

"...the Commission does not believe that it would be proper for either party to amend its final offer 'five minutes' before the hearing time starts.

"If either party desires to amend its final offer before the hearing, such amended offer should be in writing and should be received by the other party and the Arbitrator at least prior to the date of the hearing. To do otherwise would certainly violate the spirit of the statute."

DISCUSSION The first issue here is a procedural one, namely whether the issue of indemnification is withdrawn as settled, by the offer of the Union to accept that part of the final offer of the County, dealing with the issue of indemnification. The Union's basic argument is that a bona fide dispute no longer exists on this matter. The County's basic argument is that the Union has taken an unreasonable position on several issues and these facts must remain before the Arbitrator.

A perusal of Section 111.77 (4) which covers final and binding arbitration shows that

"Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The Arbitrator shall elect the final offer of one of the parties and shall issue an award incorporating that offer without modification."

The statute is silent on allowing further amendments by the parties, even agreements, after five days. A letter of the Wisconsin Employment Relations Commission cited above indicates that the Commission does not believe that an offer at the date of or shortly before the hearing is within the spirit and intent of the statute. The Union holds that the overall intent of the statute is to peaceably settle differences, and in effect under the County's reasoning even if the Union were to accept the whole County offer, the dispute would still be alive.

After contemplating the statute, the Arbitrator holds that in the absence of other statutory guide, the matter before him is the last best offer as amended, intact. A last best offer is under the statute for Form 2, in the opinion of the Arbitrator is intended to be considered as a "package" - an offer which must be taken as a whole, and which becomes a different offer with a different impact if any part of it is changed.

This concept is important to parties in bargaining under Form 2 for they prepare total offers, packages, in which individual items are balanced in order to get or hold something more favorable for the parties by also offering something less favorable for

themselves. If any element is changed after the final offer, the character of the whole offer is changed. In this instance the County has certain propositions for which it is strongly contending and no doubt hopes to hold them by weighing its chances as a whole against Union claims, some of which the County considers to be less reasonable than other County items.

Further the removal of an item after the last best amended offer is submitted may not be conducive to settlement of the remaining positions as one side or the other may perceive its total positions as intolerably compromised as in the instant case, leading to further dispute.

In the absence of any additional guidance from the statute on procedures after the last best amended offers due five days before the hearing, the Arbitrator therefore holds that the issue of indemnification must remain before him as the amended final offer which he must consider in Section 111.77 4 (b).

On the matter of the issue itself, the Arbitrator believes that the more reasonable of the two offers is the County's offer, considering its claimed statutory limitation on liability for sheriffs, which limitations have been extended to under-sheriffs and deputy sheriffs by an Attorney General's opinion. The County's concern that it might be found on both sides of a dispute between officers, or faced with a large settlement and legal costs for a situation in which an officer conducted himself in bad faith, are reasonable.

The County's offer in writing - not to be put in the contract, however - to provide counsel for situations where officers are sued after having acted in good faith is reasonable.

#### ISSUE OF LENGTH OF CONTRACT

The remaining issue in the instant matter is the length of the Contract. The Union's Final Offer is

"One year agreement effective January 1, 1974, through December 31, 1974."

The County's Final Offer is

"The County maintains its offer of a two year agreement (January 1, 1974, to December 31, 1975) (See No. 4)"

"No. 4" refers to its offer on wages which was stated

"An alternate offer of 6% effective January 1, 1975, or in the alternative, a wage rate reopener for the second year. (January 1, 1975 - December 31, 1975.)"

UNION'S POSITION . The Union holds that on the merits of its arguments on inflation and other issues, the pattern of a one year term for the contract should be accepted. It states that the County is attempting to impose a two year contract simply because this type of contract was accepted by other Unions with less bargaining strength. The County should be encouraged, according to the Union, to evaluate Local 695's proposals on their own merits and to adopt a bargaining position independent of its negotiations with other unions. The Union asserts that according to the law, it is the intent that firefighting and law enforcement personnel be accorded different and distinct treatment for non-uniformed personnel.

The Union rejects the reasons offered by the County on a two year contract that other unions agreed to a two year contract, and that negotiations occur too frequently. Whatever other unions did agree to is not binding on Local 695, and since the other unions did agree to two year terms, the problem of collective bargaining for the County will not be so great in 1974. The County can then focus on its issues with 695.

Beside this, the Union notes that the County offered to negotiate wages in 1974, and if it has made this offer then there is no reason why non-wages issues can not be disposed of. There are a number of important no-wage issues, regarding safety, which should not be allowed to fester for another year.

Since there are so many non-wage issues of importance the Union holds that it is best that there only be a one year contract.

COUNTY'S POSITION. The County holds that a two year contract is sound, equitable and consistent with good labor relations for all. The County has been in constant contract negotiations with one year contracts, and the present case is a good example. The County under a one year contract will be receiving Union demands for 1975 by September 1, 1974 which is less than six weeks from the time the briefs were filed.

The County also says that it has to meet a November 15 budget deadline under the statute, and moreover both the AFSCME Union and Nurses Association agreed to contracts of two years for the first time.

The County notes that it is making a wage re-opener which it is not offering to other employee unions and is doing so because of an Arbitrator's judgment in a case involving the City of Waukesha and the Waukesha Professional Policemen's Association in which the Arbitrator granted a two year contract with the wage re-opener.

The County cites two year contracts in neighboring counties of Kenosha, Ozaukee and Washington, and the municipalities of Brookfield and Waukesha. The County also notes that there are other places where the Union has two year contracts.

The County holds that because the Union dropped the issues on safety in previous bargaining, they are not so critical to the concept of a two year contract as to constitute a basis for not granting it.

The County argues that the amendment of the Wisconsin Statutes on collective bargaining in the public service to admit contracts of up to three years is a developing constructive movement in the public service.

The County further strongly urges the two year contract because negotiations and arbitration have occupied such a substantial amount of time and have delayed settlement of contracts for many months. The County states that it is not trying to gain an economic advantage over the personnel by this request and holds that other unions accepted it as evidence there was equity and good labor relations concepts supporting this request.

DISCUSSION. The evidence in this hearing appears that there is a growing pattern of two year contracts emerging in the Waukesha area, and the County's offer is not out of line as to two years, with the one year re-opener, being offered on wages the settlement of a dispute between Waukesha policemen and Waukesha city.

Without the two year re-opener, the County offer would in this present time of rapid inflation and uncertain economic future stability make its offer completely unacceptable. With it, its offer is reasonable.

The Arbitrator is persuaded on the basis of the County arguments that it faces undue stress arising from continual one year contracts which may proceed to binding arbitration, and that for the benefit of all parties, a two year contract appears more reasonable.

#### SUMMARY OF DISCUSSION

The total of the proposals must be considered as a whole with the factors weighed together as a package.

Concerning the ability of the local unit of government to pay the costs, the County appears to have the ability to pay the current costs of either proposal although the Union proposal commits it to an escalating feature, longevity, to which the County strongly objects, and which could prove an important factor in the future.

With respect to the consumer prices, the Union proposal for wages alone is closer to the actual rise in prices.

The overall compensation presently received by the employees is substantial and tends to reduce the differences between the Union and County offer on wage rates.

Changes in the consumer prices indicate that if a one year contract is not existent, a wage re-opener for the year 1975 becomes an important feature.

Concerning the matter of indemnification, considering the lawful authority of the parties, the proposal of the County is a substantial offer and does not at this stage present the possibility of legal challenge as to whether it can offer a blanket indemnification clause in its contract.

On the basis of the above facts, evidence and discussion, the following award is made:

AWARD

The terms of the final offer of the COUNTY OF WAUKESHA of March 4, 1974, in the proposed settlement of a contract with the DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEE AND HELPERS UNION LOCAL NO. 695 for personnel with the power to make arrests in the Sheriff's Department, shall be the terms of the contract for 1974 and 1975, with the inclusion therein of a wage re-opener for the second year of January 1, 1975 to December 31, 1975.

Frank P. Zeidler /s/

Frank P. Zeidler  
Arbitrator

July 26, 1974

# APPENDIX A

## County Supplemental Exhibit 7

### BARGAINING UNIT ONLY LONGEVITY COST PROJECTIONS 1974-1994

Between the years, 1963 to 1973, the bargaining unit has grown 38 employees or an average of 4 employees per year. Assuming a 5.5 per cent pay increase in wages and growth of 4 employees per year, the following projections of longevity total dollar cost are depicted:

<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	
\$37,354.72 Longevity Cost	\$37,354.72	\$40,896.36	\$44,714.61	\$48,829.12	\$53,261.00	
	<u>1,409.60</u> + 4 Employees	<u>1,487.16</u>	<u>1,568.92</u>	<u>1,655.24</u>	<u>1,746.28</u>	
	\$38,764.32 Sub-Total	\$42,383.52	\$46,283.53	\$50,484.36	\$55,007.28	
	<u>2,132.04</u> +5.5% Wage	<u>2,331.09</u>	<u>2,545.59</u>	<u>2,276.64</u>	<u>3,025.40</u>	
	\$40,896.36 Total Estimated Longevity Cost	\$44,714.61	\$48,829.12	\$53,261.00	\$58,032.68	
<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
\$58,032.68	\$63,231.85	\$68,827.37	\$74,847.11	\$81,320.82	\$88,280.23	\$95,759.17
<u>1,902.72</u> +4 Employees	<u>2,007.36</u>	<u>2,117.76</u>	<u>2,234.24</u>	<u>2,357.12</u>	<u>2,486.76</u>	<u>2,623.52</u>
\$59,935.40 Sub-Total	\$65,239.21	\$70,945.13	\$77,081.35	\$83,677.94	\$90,766.99	\$98,382.69
<u>3,296.45</u> +5.5% Wage	<u>3,588.16</u>	<u>3,901.98</u>	<u>4,239.47</u>	<u>4,602.29</u>	<u>4,992.18</u>	<u>5,411.05</u>
\$63,231.85 Total Estimated Longevity Cost	\$68,827.37	\$74,847.11	\$81,320.82	\$88,280.23	\$95,759.17	\$103,793.74
<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
\$103,793.74	\$112,422.47	\$121,686.39	\$131,629.26	\$142,297.75	\$153,741.59	\$166,013.78
<u>2,767.84</u> +4 Employees	<u>2,920.08</u>	<u>3,080.68</u>	<u>3,250.12</u>	<u>3,428.88</u>	<u>3,617.44</u>	<u>3,816.40</u>
\$106,561.58 Sub-Total	\$115,342.55	\$124,767.07	\$134,879.38	\$145,726.63	\$157,359.03	\$169,830.18
<u>5,860.89</u> +5.5% Wage	<u>6,343.84</u>	<u>6,862.19</u>	<u>7,418.37</u>	<u>8,014.96</u>	<u>8,654.75</u>	<u>9,340.66</u>
\$112,422.47 Total Estimated Longevity Cost	\$121,686.39	\$131,629.26	\$142,297.75	\$153,741.59	\$166,013.78	\$179,170.84
<u>1993</u>	<u>1994</u>					
\$179,170.84	\$193,273.00					
<u>4,026.32</u> +4 Employees	<u>4,247.76</u>					
\$183,197.16 Sub-Total	\$197,520.76					
<u>10,075.84</u> +5.5% Wage	<u>10,863.64</u>					
\$193,273.00 Total Estimated Longevity Cost	\$208,384.40					